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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,750	01/21/2002	Morton M. Mower	2206-001 C	6121
7590	08/20/2004			
Roberts Abokhair & Mardula, LLC Suite 1000 11800 Sunrise Valley Drive Reston, VA 20191			EXAMINER JASTRZAB, JEFFREY R	
			ART UNIT 3762	PAPER NUMBER

DATE MAILED: 08/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/053,750

Applicant(s)

MOWER, MORTON M.

Examiner

Jeffrey R. Jastrzab

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/29/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-66 is/are pending in the application.
- 4a) Of the above claim(s) 10, 11 and 58-66 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 21 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/19/03x2.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Claims 10, 11 and 58-66 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/29/04.

Interference

Claims 12-57 of this application has been copied from U.S. Patent No. 6,233,484 for the purpose of an interference.

Applicant has failed to specifically apply each limitation or element of each of the copied claim(s) to the disclosure of the application.

Applicant is given ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing date of this communication to specifically apply each limitation or element of each of the copied claim(s) to the disclosure of the application. See 37 CFR 1.607(a)(5). THE PROVISIONS OF 37 CFR 1.136 DO NOT APPLY TO THE TIME SPECIFIED IN THIS ACTION.

Claims 12-57 of this application have been copied by the applicant from U.S. Patent No. 6,233,484. This claim is not patentable to the applicant because of the following new matter issues.

An interference cannot be initiated since a prerequisite for interference under 37 CFR 1.606 is that the claim be patentable to the applicant subject to a judgment in the interference.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 12-57 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. See comments below regarding the new matter added by the 5/15/02 amendment.

The amendment filed 5/15/02 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

There is no support for the delivery of non-excitatory stimulation pulses not at every beat of the heart, e.g. Claims 12 and 13. The Examiner does not consider the phrase "the pacer operates to suit the particular needs of the patient" to encompass this teaching.

There is no support for reducing oxygen consumption, e.g. Claim 14. The Examiner does not consider the phrase in Applicant's specification "enhanced myocardial function" to encompass all possible effects on the heart.

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There is no support for reducing contraction force, e.g. Claim 15. The Examiner does not consider the phrase in Applicant's specification "enhanced myocardial function" to encompass all possible effects on the heart. Applicant actually appears to teach the opposite when stating that "*enhanced* muscle contraction is obtained" and "superior cardiac contraction" is obtained, e.g. spec. page 5.

There is no support for stimulation at at least two root locations, e.g. Claim 16. The Examiner does not consider the phrase in Applicant's specification "enhanced myocardial function" to suit the particular needs of the patient" to encompass this teaching.

There is no support for promoting healing after infarct, e.g. Claim 28. The Examiner does not consider the phrase in Applicant's specification "trauma or disease" to include the more specific problem "infarct".

There is no support for treating "congenital or acquired hypertrophic cardiomyopathy", e.g. Claim 32. The Examiner does not consider the phrase in Applicant's specification "a conduction disorder" to include these more specific problems.

There is no support for promoting healing of an ischemic area, e.g. Claim 54. The Examiner does not consider the phrase in Applicant's specification "trauma or disease" to include the more specific problem "ischemia".

There is no support for aiding in performing ablation, e.g. Claim 56. Even though the limitation may be an intended use limitation, there is no support of such specifics in applicants' specification. Allowing entry of this statement would

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permit further entry of a method claim including an ablation step, which applicants clearly did not envision based on the disclosure as filed.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Objections

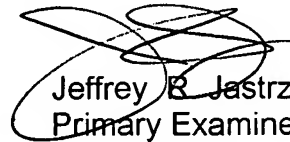
Claim 15 is objected to because of the following informalities: "point" should be - - points- - in line 6. Appropriate correction is required.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Jastrzab whose telephone number is (703) 308-2097. The examiner can normally be reached on Monday - Friday 5:30a.m. to 2:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey R. Jastrzab
Primary Examiner
Art Unit 3762
8/18/09